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AUSTIN TX 78701

In re Application of :
FOURNAND et al. :
Application No.: 10/598,979 : DECISION
PCT No.: PCT/EP2005/002875 :
Int. Filing Date: 16 March 2005 :
Priority Date: 17 March 2004 :
Attorney Docket No.: ESSR:124US/10612008 :
For: OPTICAL LENS HOLDER :

This decision is in response to applicants' "PETITION TO THE DIRECTOR UNDER 37 CFR 1.181" filed in the United States Patent and Trademark Office (USPTO) on 11 December 2007.

BACKGROUND

On 16 March 2005, applicants filed international application PCT/EP2005/002875, which designated the U.S. and claimed a priority date of 17 March 2004. A copy of the international application was communicated to the USPTO from the International Bureau on 29 September 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 18 September 2006 (17 September 2006 being a Sunday).

On 15 September 2006, applicants filed, *inter alia*, a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 11 May 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF INSUFFICIENT FEES indicating, *inter alia*, that additional claim fees, the search fee, the examination fee, and the surcharge under 37 CFR 1.492(h) were required. The Notification set a TWO (2) MONTH extendable period for reply.

On 11 December 2007, applicants filed a submission which included the additional claim fees and the surcharge as well as the instant petition under 37 CFR 1.181.

DISCUSSION

The petition requests a refund of the five-month extension of time fee paid on 11 December 2007 because applicants purportedly did not receive the NOTIFICATION OF INSUFFICIENT FEES mailed 11 May 2007. This request is based on a failure to receive an Office action. See MPEP § 711.03(c), para. I.A. The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Items (1) and (2) have been satisfied.

Item (3) has not been satisfied. MPEP § 711.03(c)), para. I.A. states that "[a] copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question." Such a docket report has not been provided.

Accordingly, the extension of time fee paid on 11 December 2007 will not be refunded.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web or if mailed should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application.

/Daniel Stemmer/

Daniel Stemmer
Legal Examiner
PCT Legal Affairs

Application No.: 10/598,979

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Telephone: (571) 272-3301